

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TIMOTHY WANDELL, a single man,

Plaintiff,

vs.

No. CIV 97-1299 JC/WWD

6001, INC., a New Mexico corporation, et al.,

Defendants,

and

TBCH, Inc., a New Mexico corporation,

Nominal Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for consideration of Defendant TBCH, Incorporated's Motion to Dismiss or to Stay (Doc. No. 32). The Court has reviewed the motion, the memoranda submitted by the parties, and the relevant authorities. The Court finds that the motion is not well taken and will be denied.

Background

Plaintiff and three individually-named Defendants--Lawrence Dellheim, Raymond Woodruff and Richard O'Neill--are shareholders of TBCH, Inc. ("TBCH"). TBCH is a closely held New Mexico corporation that operates "TD's at Eubank," a semi-nude nightclub in Albuquerque. Plaintiff is a 30% shareholder of TBCH. Defendant Gene Messer is an officer of TBCH and is the manager of TD's at Eubank.

Sometime after the opening of TD's at Eubank, Dellheim, Woodruff and O'Neill formed a second corporation, 6001, Inc. ("6001"). 6001 opened a competing semi-nude nightclub in Albuquerque called "TD's North." Dellheim, Woodruff and O'Neill also became shareholders in a third corporation, Pro Management, which manages various semi-nude nightclubs in Arizona and New Mexico. Plaintiff claims the formation of 6001, and the operation of a competing nightclub, were breaches of the fiduciary duties held by the officers and directors of TBCH. Plaintiff also claims Messer, Dellheim, Woodruff and O'Neill allowed TBCH to pay excessive management fees to Pro Management, in violation of their fiduciary duties to TBCH. Plaintiff claims these excessive fees amounted to a constructive dividend. Finally, Plaintiff brings a claim for oppressive conduct against the majority shareholders of TBCH and seeks dissolution of the corporation pursuant to NMSA § 53-16-16.

Analysis

Defendant TBCH moves to dismiss Plaintiff's case without prejudice pending an investigation by Mr. Russell Moore, TBCH's "independent counsel." Alternatively, TBCH moves to either: (1) stay the case pending Mr. Moore's investigation, or (2) appoint Mr. Moore as a special master pursuant to Federal Rule of Civil Procedure 53.

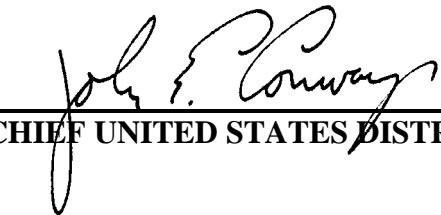
The Court will deny Defendant TBCH's motion altogether. Although the Court has discretion to stay the case in light of the investigation initiated by TBCH, see NMSA § 53-11-47A(3), the Court does not feel a stay--or a dismissal--would be appropriate. Plaintiff's allegations in this case are straightforward and elemental; they are tailor-made for a quick and efficient factual determination.

Investigation into these allegations will not entail a significant undertaking on Mr. Moore's part, and the Court will not be unduly burdened by keeping this case on its docket. (Def. TBCH's Reply at 5.)

Wherefore,

IT IS HEREBY ORDERED that Defendant TBCH's Motion to Dismiss or to Stay is **denied**.

DATED this 9th day of April, 1998.



CHIEF UNITED STATES DISTRICT JUDGE

Counsel for Plaintiff:

Geoffrey D. Rieder
Silva, Rieder & Maestas, P. C.
Albuquerque, New Mexico

L. Anthony Fines
Lane D. Oden
Fines & Oden, P.L.C.
Tucson, Arizona

Counsel for Nominal Defendant:

Russell Moore
Spencer Reid
Keleher & McLeod, P. A.
Albuquerque, New Mexico